Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	**)**
	)
ITA Informal Request for Certification	**)**
To Coordinate the Power Radio Service,	**)**
Railroad Radio Service,	**) RM-10687**
And Automobile Emergency Radio Service	**)**
Under Part 90 of the Commission's Rules	**)**
	)

COMMENTS OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.

The Industrial Telecommunications Association, Inc. (ITA) hereby respectfully submits its comments in response to the Commission's *Public Notice* (Notice) in the above-referenced matter.[1] The Notice seeks comment on ITA's *Informal Request for Certification*[2] (Request) to coordinate the power, railroad, and automobile emergency radio services currently governed under Part 90 of the Commission's rules.[3] As discussed below, ITA is capable and qualified to perform frequency coordination for these service pools, and we stand prepared to support these eligibility groups in frequency coordination services below 512 MHz, as we have done for over

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1 *See* Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, Report No. 2601 (rel. March 26, 2003).

2 *See* ITA Informal Request for Certification to Coordinate the Power Radio Service, Railroad Radio Service and Automobile Emergency Radio Service Under Part 90 of the Commission's Rules, RM-10687, filed on January 27, 2003 (Request). ITA suggested, in its Request, that its filing be treated as a Petition for Rulemaking, if the Commission determines that a rulemaking proceeding is necessary.

3 47 C.F.R. § 90.35 (b).

17 years in the 800 and 900 MHz bands and for 50 years on traditional private land mobile channels.

I. Statement of Interest

ITA is a Commission-certified frequency advisory committee coordinating in excess of 13,000 applications per year on behalf of applicants seeking Commission authority to operate on a wide-variety of frequency assignments allocated between 30-900 MHz.

ITA enjoys the support of a membership including more than 2,100 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

Alliance of Motion Picture and Television Producers
Aeronautical Radio, Inc.
National Propane Gas Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communications Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc.

ITA's extensive involvement with the private land mobile industry expands into many services including: application preparation for public safety and first responders; coordination and engineering services for industrial/business users, commercial licensees under Part 90 of the Commission's rules, and PMRS radio dealers; protection of petroleum service users through a contractual agreement with the American Petroleum Institute; an industry liaison for equipment manufacturers and end users, as well as band managers and end users; the Commission's first line of post-licensing, interference resolution; and various other services.

II. Background

As outlined in our Request, the Commission has recently recognized the benefits of competitive coordination in private land mobile services,[4] but has yet to open up the Power, Railroad and Automobile Emergency channels below 512 MHz for competitive coordination. With this comment period, the Commission is reviewing outdated policies of coordination monopolies in these services, and specifically seeking coordination efficiencies in the PMRS bands.

III. Discussion

As will be discussed in more detail below, ITA is not seeking to "indiscriminately" add general industrial/business licensees on power, railroad and automobile emergency channels; to the contrary, it is only seeking competitive coordination. Furthermore, as will be demonstrated below, ITA is qualified and well-versed in coordination for these specific groups. Moreover, the Universal Licensing System (ULS) has made information sharing effortless amongst coordinators, making competitive coordination relatively simple with up-to-date data. Given the above and the public interest benefits of competition, the Commission will be able to proceed by

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[4] *See* Request at p. 2-3. *See also* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, Second Report and Order, PR Docket No. 92-235 (rel. Mar. 12, 1997) (Refarming 2nd R&O), consolidating the private land mobile radio service into two pools, public safety eligibles and industrial/business eligibles, with the exception of power, railroad, and automobile emergency channels. *See also*, United Telecom Council Informal Request for Certification as a Frequency Coordinator in the PLMR 800 MHz and 900 MHz Bands, *Order*, DA 01-944 (rel. Apr. 18, 2001) which certified ITA, MRFAC, PCIA and UTC to coordinate 800 MHz and 900 MHz business and industrial/land transportation frequencies (800/900 Order). *See also* Wireless Telecommunications Bureau Announces that Forest Industries Telecommunications is Certified as a Frequency Coordinator for 800/900 MHz Business and Industrial/Land Transportation Frequencies, *Public Notice*, DA 01-1474 (rel. Jun. 22, 2001). *See also* Wireless Telecommunications Bureau Announces that American Mobile Telecommunications Association, Inc., is Certified as a Frequency Coordinator for 800/900 MHz Business and Industrial/Land Transportation Frequencies, *Public Notice*,

certifying ITA as a frequency coordinator for the power, railroad and automobile emergency channels below 512 MHz.

A. ITA is Only Seeking Competitive Coordination, Not Open Access.

In virtually identical filings, Cinergy Corporation and Westar Energy boldly claim that ITA's certification could lead to "ITA placing many non-utility licensees on [power] channels without due concern for the integrity of the spectrum."[5] Going further, these entities state that power entities do not have exclusive use in the post-refarming era and that competitive coordination policies currently exist for these channels.[6] In our Request, ITA states that "these channels should retain exclusive-use by their current eligibility groups," and requests the authority to competitively coordinate these applications.[7] Such a statement demonstrates ITA's desire to maintain the integrity of these channels by requesting that they retain primary status for power, railroad and automobile emergency applicants,[8] who will be given special consideration on these channels.[9] Primary-use designations on these channels with special consideration for these eligibility groups would quell the ability of frequency advisory committees (FACs) to

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DA 01-1537 (rel. Jun. 29, 2001).

[5] Comments of Cinergy Corporation at p. 8, and Comments of Westar Energy, Inc. at p. 7 (Cinergy/Westar). It should also be noted that one frequency coordinator has posted information on their website with the headline: "ITA Seeks Access to Your Frequencies;" a blatantly false statement. *See* www.utc.org (as of May 12, 2003).

[6] Cinergy/Westar at p. 9 and 8.

[7] Request at p. 9. Concurrence currently discourages use by non-pool specific eligibles, making these pools by-and-large exclusive in nature. Nevertheless, ITA believes these channels should retain primary status with special consideration for their intended applicants.

[8] Similarly, petroleum channels should be primarily available to petroleum entities.

[9] By special consideration, ITA intends to maintain the integrity of these channels for their respective pool-specific incumbent users. As such, coordination should consider an incumbent's ability to move or expand its system without undue degradation from applicants seeking to provide services in close proximity to existing pool-specific operations. ITA would be willing to discuss alternative, reasonable contour-based protection criteria for service specific incumbent with the current concurrence providing FACs.

place non-utility licensees on power channels, non-railroad licensees on railroad channels, or non-automobile emergency licensees on automobile emergency channels.

Furthermore, to meet this end, ITA suggests that the Commission strengthen its enforcement capabilities in the private land mobile radio services. Certified FACs that abuse the use of frequency coordination procedures should be held accountable by the Commission. Nevertheless, power, railroad and auto emergency coordinators would continue to have the benefit of daily transactions between FACs to determine if licensees were certified to operate on these channels. If a non-service specific applicant was placed on these channels in close proximity to a service-specific incumbent, any coordinator could bring the "unsound" coordination to the attention of the offending coordinator for resolution. If no agreement could be reached, the item should be brought to the attention of the Commission for resolution. Industry cooperation with the backbone of enforcement by the Commission should promote efficiencies in the coordination process, while protecting these channels for their intended user groups.

While some commenters claim that competitive coordination currently exist on these channels, concurrence remains a barrier to effective competition.[10] No incentive can be provided to applicants seeking coordination of these channels by non-pool specific coordinators to offset

[10] Some commenters imply that a monopoly does not exist on these channels because any FAC may coordinate applicants on these channels with concurrence. Cinergy/Westar at p. 9 and 8. By way of analogy, competitive local exchange carriers can compete with incumbents on paper, but in many cases *de facto* monopolies have been found in local markets. Just because there are no regulatory barriers to entry does not mean that competition thrives. For example, UTC makes the claim that ITA has only requested concurrence 10 times over the past 2 years. Comments of the United Telecommunications Council at p. 5 (UTC). When ITA receives an application for a power, railroad or automobile emergency channel, we must explain the concurrence process to the applicant. In most cases, the applicant will then take their application to the concurrence provider as opposed to paying both coordinators for time working on the application.

the excess time and money spent for a coordination blessing from a service-specific monopoly provider. Concurrence, therefore, blocks the effects of competitive coordination and acts as a buffer for better, less costly and quicker service for private land mobile applicants. In short, this request seeks true competition on the power, railroad and automobile emergency channels, without altering the intended eligible applicants for these services, but instead strengthening the integrity of these channels by making them primarily available to their respective applicants and providing them with special consideration.

B. ITA Meets the Commission's Criteria for Certification, and Experience Demonstrates that ITA is Qualified to Perform Coordination on These Channels.

As noted in the Request, ITA has met the Commission's criteria for certification both in the 1986 *Order* establishing frequency coordination services[11] and in a more recent *Order* certifying the United Telecom Council (UTC), et al., to provide competitive services at 800 and 900 MHz.[12] No commenter correctly disputes that ITA is not qualified to perform frequency coordination services.[13] Many commenters, however, create broad and unsupported assumptions

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[11] *See* Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 83-737 (rel. April 15, 1986) (1986 Order).

[12] *See* United Telecom Council Informal Request for Certification as a Frequency Coordinator in the PLMR 800 MHz and 900 MHz Bands, *Order,* DA 01-944 (rel. April 18, 2001) (800/900 MHz Order). *See also* Request at p. 5-10.

[13] PSEG Services Corporation (PSE&G) incorrectly implies that ITA improperly coordinated an application for Horizon Communications over PSE&G's exclusive system, WNZH802. *See* Comments of PSEG Services Corporation at p. 5-6 (PSE&G). Let us first note that PCIA improperly coordinated Horizon's application over WNZH802. UTC then certified an application for PSE&G with an interfering contour that overlapped Horizon's service area contour. PSE&G was filing a new application for a system that has existed for years because it failed to renew its license. The new application for PSE&G, however, did not conform with 90.187 of the Commission's rules, even if Horizon's application was granted erroneously. ITA's Petition for Revocation of UTC's certification, while dismissed due to an inadvertent and incorrect filing address, was technically accurate. Moreover, just because the first coordination was unsound does not justify as second equally unsound coordination. Likewise, simply because PSE&G had previously been authorized to use these channels before it allowed its license to lapse in no way justifies the second unsound coordination. Nevertheless, ITA did not coordinate either

that ITA does not know how to perform power coordination and is not sensitive to the best interest of utilities in recent rulemaking proceedings.[14] These counterfactual statements will be addressed below.

1. ITA Has Performed Power, Railroad and Automobile Emergency Coordination As the Sole Coordinator in the Industrial/Land Transportation Pool at 800 and 900 MHz for Over 15 Years.

In 1986, the Commission certified ITA's predecessor (the Special Industrial Radio Service, or SIRSA) as the most qualified coordinator to perform frequency coordination services in the 800 and 900 MHz Industrial/Land Transportation (I/LT) pools.[15] In the 15 years following, ITA was the only frequency coordinator to perform I/LT coordination (for which these groups are classified) for this critical spectrum band.[16]

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one of these erroneously coordinated systems or much less, take 11 months to do so as alleged by PSE&G.

Puget Sound Energy (Puget) also makes an unsupported assessment of ITA's coordination services. Comments of Puget Sound Energy at p. 1 (Puget). Unfortunately, it offered no specific coordination information for ITA to comment on. Nevertheless, ITA would be more than happy to research this situation and work with Puget on the issue if more information were forthcoming.

[14] Comments of Ameren, Inc. and Dominion Resources, Inc. at p. 5-8 (Ameren); Comments of the American Automobile Association, Association of American Railroads, United Telecommunications Council and American Petroleum Institute at p. 17 (Opposition); Comments of the Association of American Railroads at p. 13, 19; Comments of Central Electric Power Cooperative at p. 1; Cinergy/Westar at p. 8 and 7; Comments of Lincoln Electric System at p. 2; PSE&G at p. 6; Comments of Progress Energy at p. 3, 6 (Progress); Puget at p. 1; Comments of Southern Company at p. 3 (Southern); UTC at p. 10; and Comments of Wisconsin Electric Power Company/Wisconsin Gas Company at p. 1 (WEPC).

[15] 1986 Order at ¶ 99, 107-108.

[16] The criticality of this band to the power and railroad community can be seen in the current 800 MHz proceeding seeking to rectify the public safety – CMRS interference problem. Many utilities, including Cinergy, Southern and Ameren have argued as a part of that proceeding how critical their operations are in the 800 MHz band. *See* Improving Public Safety Communications in the 800 MHz Band and Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, *Notice of Proposed Rule Making,* WT Docket No. 02-55 (rel. Mar. 15, 2002) (800 Interference NPRM). *See also* Comments of the Cinergy Corporation, WT Docket No. 02-55, on May 6, 2002, at p. 4-5. *See also* Comments of Southern Communications Services, Inc. dba Southern LINC, WT Docket 02-55, on May 6, 2002, at p. 5-7. *See also* Comments of the Ameren Corporation, WT Docket 02-55, on May 2, 2002, at p. 2, stating that

On March 6, 2000, UTC filed an *Informal Request for Certification* seeking to provide competitive coordination services at 800 MHz.[17] As the pool-specific coordinator at the time, ITA did not oppose competition, but instead suggested that the Commission open all business and I/LT channels to competition.[18] To its credit, the Commission pursued the benefits of competition at 800 MHz and opened up this critical spectrum to competitive coordination.[19]

Despite recent changes in competitive frequency coordination services at 800 and 900 MHz, however, ITA managed the Industrial/Land Transportation pool in these bands for 15 years. In the course of this time, ITA has become "intimately familiar" with, and literally certified thousands of applications for, private land mobile entities seeking new spectrum opportunities, including many power, railroad and auto emergency eligibles. The Commission's database of 800 and 900 MHz licensees is replete with utilities, railroads and automobile emergency entities; all coordinated by ITA.

Even after competition was introduced, ITA continues to provide services for these types

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> "Ameren uses an extensive 800 MHz trunked radio system consisting of 60 networked sites distributed across its service area in Missouri and five 900 MHz trunked radio sites at its power generation stations in Illinois for communications supporting customer electrical and gas service, as well as internal generating station operations. These radio systems are a critical tool for providing safe and reliable electrical and gas service to Ameren customers."

Unbelievably, Ameren questions whether ITA "has experience performing licensing work" for power entities, at p. 5, when Ameren's system, itself, is one large example of ITA's knowledge of, and experience in, coordinating 800 MHz and 900 MHz utility systems.

[17] *See* UTC Informal Request for Certification to Coordinate 800 and 900 MHz Private Land Mobile Radio Service Frequencies, *Informal Request for Certification,* filed on March 6, 2000 (UTC Informal Request). Tellingly, UTC believed competition was necessary at 800 and 900 MHz (where utility entities have claimed utility systems are highly critical in the 800 Interference proceeding), but not for power channels in the industrial/business pool below 512 MHz. All signs point to an organization that only supports competition when it does not directly impact its monopoly interest over coordination services.

[18] Comments of the Industrial Telecommunications Association, Inc., DA 00-1172, UTC Informal Request for Certification to Coordinate 800 and 900 MHz Private Land Mobile Radio Service Frequencies, filed June 26, 2000, at p. 2.

of eligibles at 800 and 900 MHz. Since January of 2002 alone, ITA has handled over 300 applications for power entities at 800 MHz, including projects for the following:

- American Electric Power Service Corporation
- Duke Energy
- Citizens Arizona Gas
- Consolidated Edison Company of New York
- Consumers Energy Company
- Entergy Services
- Florida Power & Light
- Interstate Power & Light
- OneOK, Inc.
- Pinnacle West Capital Corporation
- PSI Energy
- Rutherford Electric Membership Corporation
- Southern Company/Southern LINC
- Tampa Electric Company
- Union Electric Company/Ameren, Inc.
- Westar Energy, Inc.
- Wisconsin Power & Light.

These projects have been critical for the utilities above; as many of these utilities have so stated in the 800 MHz proceeding. Moreover, none of the commenters argued that their 800 MHz radio system had been adversely affected by ITA coordination. To claim that ITA does not posses the knowledge to coordinate power utility communications systems is disingenuous, especially given that many commenters have used, and are currently using, ITA's coordination services. Not only does ITA posses the required knowledge, it has been the primary 800 and 900 MHz coordinator for these entities for the past 15 years.

2. ITA Continues to Provide Frequency Coordination Services for Power, Railroad and Automobile Emergency Licensees Below 800 MHz.

[19] 800/900 Order.

One commenter asserts that coordinating 800 and 900 MHz radio systems is not as difficult as 150-174 MHz (VHF) and 450-470 MHz (UHF) systems by stating that,

> "in the 800 MHz and 900 MHz bands, a single entity is licensed on a given frequency, and coordination is limited to the fairly simple task of determining geographic compatibility with other licensees operating on the frequency. By comparison, in the shared frequencies that make up a considerable portion of a utility's radio network, coordination is far more complex."[20]

While 800 and 900 MHz coordination is not limited to geographic compatibility, the shared environment in the VHF and UHF bands will make coordination vitally important. As a frequency coordinator since 1953, ITA has a rich history of providing private land mobile licensees with sound coordination services in a shared, and often congested, environment.

The groups of service-specific eligibles in this proceeding are no strangers to ITA's frequency coordination services in the VHF and UHF bands. Since January 1, 2002, ITA has certified over 250 applications for power, railroad and automobile emergency licensees alone on channels below 800 MHz. Examples (this list is not exhaustive) of VHF/UHF power, railroad and automobile emergency eligible coordination performed by ITA since January 2002 include the following entities:

- AAA Cooper Transportation, Inc.
- Alliant Energy Resources
- American Electric Power Service Corporation
- Arkansas Western Gas Company
- Autocar, LLC
- Automotive Industries, Inc.
- Autorail Services
- Canac Industrial Rail Services
- Carolina Power & Light

[20] Ameren at p. 6. Interestingly, Ameren does not state, and rightfully so, that 800 and 900 MHz radio systems deployed by the power industry are less important than VHF and UHF systems. Coordination of these just-as-critical 800 and 900 MHz systems must be taken into consideration when considering the merits of ITA's coordination capabilities for power systems.

- Consol Energy
- Consumers Energy Company
- Cordova Energy Center
- Duke Energy
- East Kentucky Power Corporation
- Electric Energy, Inc.
- Exel North American Logistics, Inc.
- Exelon Power
- Federal Railroad Administration
- Florida Power & Light
- Freightliner, LLC
- Great River Energy
- Intalco
- Kennecott Energy Company
- Kent Power
- Louisiana Electric Company
- Merit Energy Company
- Mesquite Power, LLC
- Mobile Energy Service Corporation
- Mountain View Electric Association, Inc.
- Ocean Energy
- PG&E National Energy Group
- PSI Energy
- Public Service Company of New Mexico
- Southern Company
- The Dayton Power and Light Company
- Tampa Electric Company
- Texas Wind Power Company
- Union Electric/Ameren, Inc.
- United Power
- Valley Electric Association, Inc.
- Valley Transportation
- Van Haren Electric, Inc.
- Victory Energy Corporation
- Virginia Electric and Power Company
- VOAM Electric Cooperative
- Westar Energy
- Wisconsin Power and Light Company
- Wolverine Electric Supply Co-op

Indeed, a substantial number of power, railroad and automobile emergency eligibles have

come to ITA for frequency coordination for their critical operations below 800 MHz. The services that ITA has provided for these entities further demonstrates ITA's ability to coordinate power, railroad and auto emergency applicants in any private land mobile band. Furthermore, ITA continues to provide numerous members and clients from a large cross-section of industry with frequency coordination services for similar wide-area, multi-state and exclusive-use systems, even outside of the power, railroad and automobile emergency industries.

3. ITA has Provided Sufficient Protection to Former Petroleum Channels Through a Contractual Agreement with the American Petroleum Institute (API).

Through a contractual agreement with API, ITA has protected petroleum channels for approximately 15 years. API notes that it selected ITA to perform the coordination functions for petroleum channels "due to its specific knowledge of the petroleum industry operations gained from its many years of experience in coordinating applications by integrated petroleum companies for Special Industrial Radio Service systems."[21] Indeed, ITA has gained many years of experience in coordinating applications for a gamut of services governed under Part 90 of the Commission's rules. With over 250 years of collective coordination experience in ITA's staff, ITA has provided frequency coordination for virtually, if not every, industry or business sector of the American economy. While ITA does have strong ties to many portions of the private land mobile industry, it is intimately familiar with the protection of "mission-critical" licensees from potential harm through appropriate engineering and frequency coordination procedures, as seen by ITA's protection of petroleum channels. While a few may see ITA's broad representation of the private land mobile industry as damaging to specific groups, we believe that such representation provides the industry with the benefit of multiple perspectives and a much-

needed, balanced approach to private land mobile advocacy and operations.

4. ITA's Membership Includes Many Power, Railroad and Automobile Emergency Eligibiles.

As noted in our Request and above, ITA is representative of power, railroad and automobile emergency licensees.[22] In addition to the clientele noted above, our membership includes a substantial number of members from these groups – many providing "mission-critical" services that protect the public or employees from harm. While certainly not an exhaustive list, the following is a sampling of ITA members in the "mission-critical" category:

- American Electric Power
- Union Electric Company
- Central IL Public Service Co. c/o Ameren Services
- Cooke County Electric Cooperative
- Diamond Electric Underground
- Duke Energy Corporation
- East Kentucky Power Coop.
- Indiana Michigan Power Co.
- Pacific Gas & Electric Company
- Penobscot Energy Recovery Company
- Sorenson Electric, Inc.
- Southern Communications Company
- Utility Service Company, Inc.
- Wagner Gas & Electric, Inc.
- Westbank Electric, Inc.

5. Many of ITA's Members and Clients Have Abstained From Supporting ITA's Request for Political Reasons.

As noted in footnote 5 above, the headline, "ITA Seeks Access to Your Frequencies" completely mis-characterizes the nature of ITA's request, and submits that ITA is seeking to

[21] Opposition at p. 10.

upset the very nature of protected, service-specific operations. Not only is the language unduly harsh, it completely misrepresents ITA's proposal. Likewise, statements such as the following: "We are extremely concerned that ITA would…load up these [power] frequencies indiscriminately with any eligible licensee," do not accurately reflect the intent of ITA's Petition.[23] Rather than focusing on a legitimate discussion of the merits of ITA's request, some have resorted to what can only be characterized as cheap theatrics and blatant scare tactics. One commenter even makes note of these actions. Marcus Lockard states, "contrary to the misinformation being distributed to the utility community…ITA is…simply seeking to introduce true competition in the coordination process."[24]

We take umbrage against the assertions that ITA would "indiscriminately" open up power channels for all industrial/business licensees. The intent of ITA's Request was clear – to provide competitive coordination on power, railroad and automobile emergency channels.

For 50 years, ITA has provided the land mobile community with sound frequency coordination while upholding the Commission's rules and the integrity of the private land mobile radio community. To assert that we are purposefully seeking to harm a specific group of licensees is deceitful and contrary to ITA's longstanding relationships with the private land mobile community. Unfortunately, in this case, such tactics may have skewed the record by forcing some licensees with dual membership to remain silent on the issue, fearing retribution.

6. ITA's Position in the 800 MHz and 4.9 GHz Proceedings Generally Support the Private Land Mobile Community, of Which Power, Railroad and Automobile Emergency Licensees are a Part.

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22 Request at p. 6-7.

23 *See* UTC Industry Intelligence, March 27, 2003.

24 Comments of Marcus Lockard at p. 1.

A few commenters state that ITA is not representative of the utility industry because ITA has not supported the best interest of utilities in recent rulemaking proceedings, claiming that ITA's position in the 800 MHz interference proceeding and in the 4.9 GHz proceeding are "adverse" and "harmful" to utilities.[25] These statements intend to dupe the Commission into believing that these proceedings have been initiated for the sole benefit of utilities, and that ITA, in supporting the Consensus Plan has stood in the way of the business plans of large utility entities.

ITA's members understand that they are a part of a larger community – the private land mobile community – and that ITA will take positions that are good for the industry as a whole, not single groups. Using regulatory blinders for only one specific service sector in the private land mobile services will not solve important regulatory issues. On the other hand, industry cooperation will promulgate successfully regulatory actions that support all of our critical operations. In the proceedings mentioned above, ITA has taken a stand that will be beneficial for the entire private land mobile industry. To claim that ITA is out to harm utilities (or other aspects of the PMRS community) in these regulatory proceedings, is simply short-sighted.

a. ITA's Position in the 800 MHz Interference Proceeding Will Not Harm Licensees That are Using Their Private Land Mobile Radio System for Private, Internal Operations.

In the 800 MHz proceeding, many utilities have claimed that they do not want to move as

[25] Ameren at p. 6-8, stating that "the Nextel/ITA sponsored 'Consensus Plan' is unanimously considered by the utility industry to be harmful to utility licensees"; Comments of Lincoln Electric System at p. 2; Southern at p. 3, claiming that "in recent FCC proceedings…ITA has taken positions that are adverse to utilities in general"; UTC at p. 10-11 and n. 26; and WEPC at p. 1.

part of the re-banding plan.[26] Instead, UTC has proposed a case-by-case, market-based solution that cures interference after it happens[27] – a solution that is not supported by the public safety community; licensees who have lives depending on interference-free operations.[28]

ITA has, instead, chosen to participate in the Consensus Plan solution – a pro-active answer to the interference problem that will not continue to put the lives of law enforcement personnel and firefighters in danger.[29] Unfortunately, many utilities view this plan as detrimental to their business interests. Utilities, however, must realize that ITA, along with 16 other organizations, have taken an approach that supports a broad range of private land mobile licensees and the public safety community. Under the Consensus Plan, 70% of business and I/LT licensees will not have to move.[30] Furthermore, for the 30% of licensees that are required to

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[26] *See* Comments of Ameren Corporation, WT Docket No. 02-55, filed September 23, 2002, at p. 6; Comments of Cinergy, WT Docket No. 02-55, filed September 23, 2002 at p. 33; Comments of Cinergy, WT Docket No. 02-55, filed on February 25, 2003 at p. 12-13; Comments of Questar Corporation, WT Docket No. 02-55, filed May 6, 2002 at p. 3; Comments of SouthernLINC, WT Docket No. 02-55, filed August 7, 2002 at p. 6-7.

[27] *See,* Comments of the United Telecom Council and the Edison Electric Institute, WT Docket 02-55, filed February 10, 2003 at p. 5-6.

[28] *See,* Comments of APCO, National Association of Cities, National League of Cities, National Association of Telecommunications Officers and Advisors, WT Docket No. 02-55, filed May 6, 2002 at p. 9-10.

[29] *See*, Reply Comments of Aeronautical Radio, Inc. (ARINC); The American Mobile Telecommunications Association (AMTA); The American Petroleum Institute (API); The Association of American Railroads (AAR); The Association of Public-Safety Communications Officials-International, Inc. (APCO); The Forest Industries Telecommunications (FIT); The Industrial Telecommunications Association, Inc. (ITA); The International Association of Chiefs of Police (IACP); The International Association of Fire Chiefs (IAFC) and International Municipal Signal Association (IMSA); The Major Cities Chiefs Association (MCC); The Major County Sheriffs' Association (MCSA); The National Sheriffs' Association (NSA); Nextel Communications, Inc.; The Personal Communications Industry Association (PCIA); The Taxicab, Limousine and Paratransit Association (TLPA), WT Docket No. 02-55, filed on August 7, 2002 at p. 2 (Consensus Plan). *See also*, letter to Chairman Powell from the National Sand, Stone and Gravel Association (NSSGA) and ITA, filed on August 15, 2002, officially adding NSSGA to the list of signatories. It should be noted at AAR, as a part of the private land mobile community, supports the Consensus Plan as a signatory.

[30] Supplemental Comments of Aeronautical Radio, Inc. (ARINC); The American Mobile Telecommunications Association (AMTA); The American Petroleum Institute (API); The Association of

move under the Plan, no utility (or other private wireless licensee) will have to retune without compensation or they do not move. In both scenarios, private wireless licensees (including utilities) are protected.[31]

b. ITA's Position in the 4.9 GHz Proceeding Promotes Public Safety and Homeland Security.

ITA understands that not all proceedings should be commented on from a perspective that only promotes one's self-interest. As such, ITA supported public safety's need for additional spectrum at 4.9 GHz.[32] Certainly, many licensees would enjoy additional spectrum access at 4.9 GHz, but the fact remains that public safety licensees need unfettered access to this critical spectrum to promote homeland security. Furthermore, ITA noted in its comments that private wireless licensees have the option of working together with public safety licensees in spectrum bands below 900 MHz.[33] We did not suggest that the Commission harm utilities; we simply sought to advance the interest of the public safety community and stated that the private wireless community may seek cooperative opportunities with public safety in traditional land

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American Railroads (AAR); The Association of Public-Safety Communications Officials-International, Inc. (APCO); The Forest Industries Telecommunications (FIT); The Industrial Telecommunications Association, Inc. (ITA); The International Association of Chiefs of Police (IACP); The International Association of Fire Chiefs (IAFC) and International Municipal Signal Association (IMSA); The Major Cities Chiefs Association (MCC); The Major County Sheriffs' Association (MCSA); The National Sheriffs' Association (NSA); the National Sand, Stone and Gravel Association (NSSGA); Nextel Communications, Inc.; The Personal Communications Industry Association (PCIA); The Taxicab, Limousine and Paratransit Association (TLPA), WT Docket No. 02-55, filed December 24, 2002, at p. 16 (Supplemental Filing).

[31] This proposal is much more lenient on private wireless licensees than Nextel's original proposal to relocate private wireless users to 700 or 900 MHz without funding. A move to 700 MHz would have also required the development of new equipment and relocation of broadcasters before the December 31, 2006, deadline.

[32] Reply Comments of the Industrial Telecommunications Association, Inc., WT Docket No. 00-32, The 4.9 GHz Band Transferred from Federal Government Use, filed August 7, 2002 (ITA 4.9 Comments).

[33] ITA 4.9 Comments at p. 5.

mobile bands. Indeed, the Commission agreed with ITA's position in the *Third Report and Order* in this proceeding, stating that traditional public safety entities will be the primary eligible group for use of this band.[34] In short, ITA has not targeted utilities in recent proceedings (*i.e.* 800 MHz and 4.9 GHz), but it has supported the protection and development of the larger private land mobile community, of which utilities are a part.

C. The Universal Licensing System (ULS) Has Made the Sharing of Information Between Frequency Advisory Committees Seamless.

ITA states in the Request that "ULS has made the sharing of information among frequency coordinators effortless."[35] The Commission has also noted the impact of ULS, stating that "the existence and development of the ULS has increased cooperation among all FCC-certified frequency coordinators…[because] the ULS has made it easier for coordinators to communicate and to share information."[36]

As required by the Commission, coordinators share information on a daily basis, and further, upload information from ULS multiple times a day. If ITA coordinates an application for any industrial/business licensee and sends that application to the Commission, every other frequency advisory committee has access to that information through two mediums: (1) directly from ITA in our required notification to all FACs; and (2) from the ULS database after the Commission assigns that application an FCC file number. This is the same for every Part 90, FCC-certified frequency advisory committee. The process is no different for UTC, AAR, AAA,

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[34] *See* The 4.9 GHz Band Transferred from Federal Government Use, *Memorandum Opinion and Order and Third Report and Order*, WT Docket No. 00-32 (rel. May 2, 2003) at ¶ 16. *See also,* 47 C.F.R. § 90.523, providing the definition of traditional public safety services.

[35] Request at p. 8.

[36] *See* Amendment of Section 90.20 and 90.175 of the Commission's Rules for Frequency Coordination of Public Safety Frequencies in the Private Land Mobile Radio Below 470 MHz, *Notice of*

MRFAC, FIT, AMTA, PCIA or others. If competitive coordination were introduced in the power, railroad and automobile emergency pools, every FAC would have access to every authorization placed on these channels under today's notification procedures.

Since notification is already a part of the coordinators' daily routine, concerned coordinators will have ample time to comment on a certification. ITA and UTC (and presumably others) currently have program technology that checks the validity of authorizations on a daily basis. ITA has computer programs that notify us of an errant authorization and permit us to contact the offending coordinator within one day of certification. This system allows us to specifically protect petroleum channels in the event that another coordinator were to license a system that may have devastating consequences to a petroleum incumbent on a petroleum channel.

Similarly, power, railroad and automobile emergency coordinators could (and should) check the validity of authorizations on power, railroad and automobile emergency channels. Likewise, ITA would continue to perform these same validity tests, making sure that every certification is compliant with the Commission's rules. Even if validity tests are not performed, FACs could quickly look through daily authorizations and note any applications that were submitted on these channels to determine if the certification is reasonable and not harmful to an incumbent. Like ITA, other FACs could then contact the offending coordinator to resolve the problem before taking a complaint to the Commission. If the errant coordinator fails to respond, then the FAC could send notification to the applicant, the incumbents and the Commission to straighten out the problem. This process has worked for ITA for the past couple of years.

Proposed Rulemaking, WT Docket No. 02-285 (rel. September 19, 2002) at 12.

Cooperation among coordinators and enhanced enforcement on the part of the Commission would strengthen this process as well, but the fact remains that ULS currently provides and would continue to provide concerned FACs with the appropriate information and opportunity to comment on a coordination that they deem inappropriate.

Information sharing would also solve the problems associated with narrowbanding. The Railway Association of Canada (RAC) states that the narrowband "migration can be successful in both [the United States and Canada] only if there is a single point of contact on each side regarding the frequency assignment plan during migration."[37] While narrowbanding does provide a legitimate concern for the entire private land mobile industry, the need for a single point of contact becomes moot if everyone is "reading off the same page" with up-to-date, accurate ULS information. Narrowbanding will be a similar problem for manufacturers, taxicabs, and commercial providers, but the accuracy and integrity of the ULS database will provide these licensees with a basis for narrowbanding solutions, regardless of which coordinator they choose to use. Similarly, the narrowband conversion would be achievable for utilities and automobile emergency licensees if the appropriate information is supplied to other coordinators via ULS, despite the frequency coordinator chosen for the licensing aspect of narrowbanding.

D. Competitive Coordination is in the Public Interest.

ITA noted in its Request that competition sparks innovation and efficiencies in the

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[37] *See* Letter from W.A. Rowat, President and Chief Executive Officer, The Railway Association of Canada, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, on April 7, 2003, Opposition to ITA Petition, RM-10687 at p. 2.

coordination process, while promoting faster coordination and reducing costs for applicants. The Commission has also promoted competition, specifically stating,

> "a coordination monopoly is unnecessary to protect licensees from harmful interference and that competition amongst the frequency coordinators is generally preferable, as it will result in better service to the public."[38]

As the Commission notes, monopoly structures are unnecessary to protect licensees from harmful interference. As mentioned above, the accuracy and integrity of the ULS coupled with industry cooperation and Commission enforcement is better suited to protect licensees from harmful interference.

Several commenters agree with ITA's assertion that competition brings about better services to the public.[39] The Salt River Project states that they "would like to see at least 3 possible coordinators for Utilities to insure competition and provide an incentive for accurate work."[40] Booth & Associates, notes,

> "Competition will spark faster speed-of-service for these eligibles; lower cost due to the lack of need for concurrence; improved customer service; enhanced sharing among frequency coordinators; and greater efficiencies in the coordination process through innovative new ideas to meet consumer demand."[41]

Even those who oppose the Request believe competition will promote frequency coordination services.[42] Consolidated Edison of New York (ConEd) was a vocal proponent of

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[38] *See* 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services, *Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 98-182 (rel. May 23, 2002) at ¶ 57.

[39] *See* Comments of Booth & Associates, Inc. at p. 2, Wayne Ezell at p. 1, Lockard and White at p. 1, MRFAC, Inc. at p. 3, PCIA at p. 2, Salt River Project at p. 1. *See generally,* Comments of FIT.

[40] Comments of the Salt River Project at p 1.

[41] Comments of Booth and Associates, Inc. at p. 4.

[42] Comments of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., DA No. 00-1172, filed June 26, 2000 (ConEd 800 Competition Comments). Comments of Consumers Energy, DA No. 00-1172, filed June 6, 2000 (Consumers 800 Competition Comments). Comments of Southern Company, DA No. 00-1172, filed June 23, 2000, generally supporting UTC to

competition at 800 and 900 MHz, stating, "UTC…asserts that increasing competition is in the public interest. ConEd and [Orange and Rockland Utilities] agree."[43] Consumers Energy also supported the notion of competition at 800 and 900 MHz by claiming that UTC would "bring a productive level of competition to the 800-900 MHz coordination marketplace."[44]

Why would competition no longer be worth supporting in the bands below 512 MHz? The fact remains that if competition will advance the "public interest" at 800 and 900 MHz, as supported by ITA, UTC, ConEd, Southern, Consumers and others, then it will do the same in the bands below 512 MHz.

E. The Commission Has Enough Information on Record and Authority to Proceed With an Order Certifying ITA as a Frequency Coordinator in the Power, Railroad and Automobile Emergency Pools Below 512 MHz.

As UTC noted in its Informal Request for certification to coordinate 800 and 900 MHz channels,

> "There is no formal procedure for requesting certification of frequency coordination services, much less for modifying an existing certification to permit coordination of other services. Therefore, the Commission may exercise its broad policymaking discretion…without the need for a protracted formal rulemaking process."[45]

ITA concurs with UTC's assessment. The Wireless Telecommunication Bureau also notes its authority to certify frequency coordinators under delegated authority, stating,

> "that the Commission has delegated to the Wireless Telecommunications Bureau the authority to certify frequency coordinators under Sections 0.131(m) and 0.331

provide competitive frequency coordination services at 800 and 900 MHz.

[43] ConEd 800 Competition Comments, at p. 3, supporting UTC's Informal Request for Certification as an 800 and 900 MHz coordinator. ConEd continues at p. 4, "the benefits of competition among coordinators have been amply demonstrated. As such, it is clearly in the public interest and should be encouraged" and at p. 5, "there is no rational reason to continue to carve out an exception to [the Commission's] policy of encouraging competition and to distinguish between frequency bands."

[44] Consumers 800 Competition Comments, at p. 3.

[45] UTC Informal Request at p. 12.

> of the Commission's Rules. Section 0.131(m) lists, as Bureau functions: '[c]ertifies frequency coordinators; considers petitions seeking review of coordinator actions; and engages in oversight of coordinator actions and practices.'"[46]

One commenter asserts that the Commission was able to proceed under delegated authority at 800 and 900 MHz because "the Commission considered *similarly situated* certified frequency coordinators that were *already representative* of a particular class of users of the frequencies [UTC] was seeking certification to coordinate."[47] It continues, "ITA has not demonstrated that it is truly experienced and represents the particular 'quasi-public safety' class at issue, let alone any, much less any significant mass of, electric power utilities."[48] This ill-conceived assertion has clearly been refuted above as seen by the list of ITA projects for power licensees both in and below the 800 and 900 MHz bands. Since ITA is representative of the users it seeks to coordinate in the power, railroad and automobile emergency pools and since the certification of ITA as a frequency coordinator in these pools would not involve any "new or novel questions of law or policy which cannot be resolved under outstanding Commission precedents or guidelines,"[49] the Commission may proceed in the "public interest" certifying ITA as a frequency coordinator in the power, railroad and automobile emergency pools.

IV. Conclusion

As stated herein, ITA is qualified to perform frequency coordination in the power, railroad and automobile emergency channels. ITA only seeks competitive coordination, which

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46 800/900 Order at ¶ 7. *See also* 47. C.F.R. § 0.131(m). *See also* 47 C.F.R. § 0.331.

47 Progress at p. 6 (emphasis in original).

48 Progress at p. 6.

49 800/900 Order at ¶ 7. *See also* 47 C.F.R. § 0.331.

could be facilitated through daily information sharing and the ULS. Competition has been the backbone of better coordination services for industrial/business licensees for the past six years and would promote innovation, efficiencies, faster coordination and reduced cost if brought to bear in the power, railroad and automobile emergency pools. With a wealth of information on record and delegated authority under Sections 0.131(m) and 0.331 of the Commission's rules, the Bureau may proceed in the "public interest" by certifying ITA to coordinate power, railroad and automobile emergency entities on power, railroad and automobile emergency channels.

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